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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

E-filing

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA,
SAN FRANCISCO DIVISION

RS

GAMELINK, INC.,

Plaintiff,

vs.

DVD ADVANTAGE, INC, dba
"GAMELINKK.COM" and DVD
EXPERIENCE, MICHAEL ROSMAN, and
JOHN LEVENTHAL

Defendants

C 03 5469

Case No. _

**COMPLAINT FOR TRADEMARK
INFRINGEMENT, CYBERSQUATTING
UNFAIR COMPETITION, PASSING OFF ,
TRADEMARK DILUTION,
and for INJUNCTIVE RELIEF AND
DAMAGES.**

COMPLAINT

COUNT 1

Federal Trademark Infringement

1. Plaintiff, GAMELINK, Inc., is a corporation duly organized and existing under the laws of the State of California, and has its principal place of business at San Francisco, California.
2. Plaintiff is informed and believes, and on the basis of such information and belief alleges that DVD ADVANTAGE, INC. is a corporation duly organized and

1 existing under the laws of the State of California, No C2187646 and has its
2 principal place of business in Chatsworth, California. This Defendant is acting
3 in co-conspiracy with the other Defendants for the events cited herein.

4 3. Plaintiff is informed and believes, and on the basis of such information and
5 belief alleges that Defendant MICHAEL ROSMAN is President and, CEO or
6 other officer of DVD ADVANTAGE, INC. and believed to be responsible and in
7 co-conspiracy with the other Defendants, for the events cited herein.

8 4. Plaintiff is informed and believes, and on the basis of such information and
9 belief alleges that Defendant JOHN LEVENTHAL is the internet CTO (Chief
10 Technology Officer), or other officer of DVD ADVANTAGE, INC., and believed
11 to be responsible and in co-conspiracy with the other Defendants, for the
12 events cited herein.

13 5. Plaintiff is informed and believes, and on the basis of such information and
14 belief alleges that DVD EXPERIENCE is a fictitious business name and
15 subsidiary of, or otherwise owned or controlled by DVD ADVANTAGE, INC,
16 and is doing business as DVD Advantage and "gamelinkk.com" and believed to
17 be responsible and in co-conspiracy with the other Defendants, for the events
18 cited herein.

19 6. Defendants and each of them conspired with the others and are acting as the
20 agent, servant, employee and authorized representative of the others in
21 concert as and are believed to be responsible and in co-conspiracy with each
22 other, for the events cited herein. All references to "Defendants" herein include
23 all the defendants.
24
25

- 1 7. This action arises under the Federal Trademark Act (15 U.S.C. §§ 1051-
2 1127), as hereinafter more fully appears, and jurisdiction is based upon 15
3 U.S.C. § 1121 and 28 U.S.C. § 1338.
- 4 8. Venue is proper in this District under 28 U.S.C. § 1391 because a substantial
5 part of the events or omissions giving rise to the Claims herein occurred in this
6 District, Defendants do extensive business in this district, Defendants
7 corporations operate in every venue in this state and the effects of the acts
8 alleged herein are substantially damaging Plaintiff in this District.
- 9 9. Plaintiff has been and now is extensively engaged in the business of marketing
10 in interstate commerce a wide variety of adult entertainment products, and
11 since 1993 has marketed entertainment on the internet under the trademark
12 GAMELINK® using the URL "GAMELINK.COM." Said services have been
13 widely advertised and extensively offered under this mark throughout the
14 world, and the trademark GAMELINK has become, through widespread and
15 favorable public acceptance and recognition, an asset of substantial value as a
16 symbol of Plaintiff, its quality services and its good will.
- 17 10. The United States Patent and Trademark Office on December 1, 1998 granted
18 federal trademark registration to Plaintiff for the trademark GAMELINK ® for
19 online sales of adult entertainment products as Registration Number 2206576.
20 A true copy of said registration is attached hereto and made a part hereof as
21 Plaintiff's Exhibit 1. Said registration is in full force and effect, is owned by
22 Plaintiff and has become incontestable under *Lanham Act Section 15* (15
23 U.S.C. §1065). Plaintiff uses the registration symbol ® on its web site.
- 24 11. Because Plaintiff is primarily and exclusively using the Internet to attract
25 customers, it depends exclusively for new customers and return business from

1 customers typing Plaintiff's URL into their web browsers and resulting in
2 opening Plaintiff's web site. A URL (Universal Resource Locator address) is an
3 alpha – numeric indicator linked to a computer address. When a customer or
4 potential customer types into a Web Browser the URL www.gamelink.com
5 (with the correct spelling with one K) the browser opens a document (Web
6 page) on Plaintiff's web site.

- 7 12. The URL GAMELINK.COM acts as the source indicator as well as an address
8 for Plaintiff's services and thus the URL also is a service mark for Plaintiff.
9 Plaintiff also places the mark GAMELINK on and in containers shipping goods
10 and in advertising on the Internet, and Plaintiff spends millions of dollars every
11 year to maintain its priority in search engines that look for the URL and for its
12 extensive and complex website. Customers diverted to Defendants site may
13 never return and "word of mouth" causes further money damages.
- 14 13. Notwithstanding Plaintiff's well-known and prior common law, registered and
15 statutory rights in the trademark GAMELINK, Defendants adopted and used
16 the URL "gamelinkk.com" with an extra "k", in California and in interstate
17 commerce for online sales of adult entertainment products. This despite
18 Plaintiff's extensive use of "GAMELINK.COM". Plaintiff is informed and
19 believes, and on the basis of such information and belief alleges that
20 Defendants had actual, and extensive, notice of Plaintiff's website business
21 and that Defendants imitated the Plaintiff's site and used this "KK" URL wilfully
22 or did so with at least constructive notice of Plaintiff's federal registration rights
23 under 15 U.S.C. § 1072.
- 24 14. As Defendant advertises, it is a source, "For Adult DVDs and Porn Videos"
25 Said use of Plaintiff's registered trade mark constitutes trademark infringement

1 and causes likelihood of confusion, deception, and mistake. Customers who
2 type the wrong spelling of Plaintiff's address with 2 k's go to Defendants and
3 see basically what they were looking for.

4 15. Plaintiff is informed and believes, and on the basis of such information and
5 belief alleges that the intent of Defendants and each of them registering the
6 GAMELINK URL with 2 K's is to cause a common mistyping by the Plaintiff's
7 customers returning or searching for GAMELINK.COM.

8 16. This registering of domain names that are intentional misspellings of distinctive
9 or famous names is termed "Typosquatting". The acts of Defendants are
10 Typosquatting of the most obvious type intended to use the good will
11 established by Plaintiff and side track and defraud the buying public looking for
12 Plaintiff. Customers who mistype GAMELINKKK would find what may look like a
13 cheaper and of much less quality web site and selection of a fraction of what
14 Plaintiff may offer. Plaintiff's customers who access the Defendants web site
15 will not buy from Plaintiff. They are diverted from Plaintiff's web site and are
16 accessing Defendants web site using what they are fraudulently led to believe
17 is Plaintiff's through the misspelled URL.

18
19 17. Those customers Plaintiff believes, will find one or more DVDs they may buy
20 from Defendants and may never return to the correct Game Link web site.

21 18. Defendants' cheaper appearance site selling what Plaintiff sells and using
22 Plaintiff's mark GAMELINK® is a willful violation of the Lanham act in violation
23 of *Section 32 (a)(1)* thereof and makes Defendants liable for willful and treble
24 damages and for attorney fees and costs.

- 1 19. Defendant's internet activities are of a highly interactive type including online
2 retail sales offered to and aimed at persons in this District, and having a great
3 effect in this District where Plaintiff is located and is famous.
- 4 20. Defendant's acts of infringement of Plaintiff's registered trademark complained
5 of hereinabove have been committed in the Northern District of California, San
6 Francisco Division, within the jurisdiction of this Court. Defendant has
7 advertised its online sales of adult entertainment products under the
8 GAMELINKK.COM trademark in California, and has established a web site that
9 directly competes in California and which is offering said products to the public.
10 Defendants have sold or offered for sale in California and in interstate
11 commerce online sales of adult entertainment products under the URL address
12 GAMELINKK.COM, thus creating likelihood of confusion, deception, dilution
13 and mistake.
- 14 21. Defendant has thus engaged in the transaction of business and the
15 commission of tortious acts in California are violations of the unfair competition
16 statutes of the California Business & Professions Code and common law.
- 17 22. Plaintiff has repeatedly requested Defendant to cease and desist from
18 infringing Plaintiff's trademark GAMELINK, but Defendants have ignored said
19 requests. Defendants have offered for sale the URL gamelinkk.com at an
20 unreasonable price of thousands of dollars and thereby are trafficking in the
21 URL.
- 22 23. Said acts of infringement have been and will continue to cause further
23 irreparable injury to Plaintiff if defendant is not restrained by this Court from
24 further violation of Plaintiff's rights, and Plaintiff has no adequate remedy at
25 law.

1 24. An injunction will not prejudice Defendants because Defendants have the web
2 site that they can assign to any Internet URL or address that does not infringe
3 on Plaintiff's rights. This change can be accomplished within minutes.

4 25. Defendant's use in commerce of the designation GAMELINKK.COM in the
5 marketing of online sales of adult entertainment products is an infringement of
6 Plaintiff's registered trademark GAMELINK, in violation of 15 U.S.C. § 1114(1).

7
8 **COUNT 2**

9 **Liability under the Anti-Cybersquatting Consumer Protection Act (ACPA)**

10 26. As its second ground for relief, Plaintiff repeats and realleges the paragraphs 1
11 through 25 of Count 1.

12 27. Defendants and each of them registered their Domain Name "gamelinkk.com"
13 with 2 Ks to lure and defraud customers and take advantage of users looking
14 for the services of Plaintiff who misspell Plaintiff's URL gamelink.com. This
15 practice showing bad faith is termed "Typosquatting" and a violation of
16 Plaintiff's rights to its trademark GAMELINK under 15 U.S.C. § 1125 (d).

17 28. The term 'domain name' means any alphanumeric designation which is
18 registered with or assigned by any domain name registrar, domain name
19 registry, or other domain name registration authority as part of an electronic
20 address on the Internet.

21
22 29. Defendants and each of them registered the confusingly similar Domain Name
23 "gamelinkk.com" in bad faith. It is almost identical to Plaintiffs registered
24 trademark GAMELINK and to Plaintiff's business name Game Link, Inc. as well
25 as Plaintiff's URL www.gamelink.com.

- 1 30. Defendants and each of them registered the Domain Name "gamelinkk.com" in
2 bad faith with the intent to profit from Plaintiff's trademark GAMELINK and
3 Plaintiff's URL "gamelink.com." Defendants offered Plaintiff to buy the
4 offending URL for thousands of dollars, an amount that was rejected by
5 Plaintiff.
- 6 31. Defendants are in bad faith by using Plaintiff's trademark to defraud the public
7 and there is no bona fide offering of any goods or services under which
8 Defendant needs or has any rights to use the words GAMELINK in the services
9 Defendants provide.
- 10 32. Defendants are trafficking in the URL "gamelinkk.com" by including, but not
11 limited to, creating their URL and having it direct users, pointing to Defendants
12 adult web site selling essentially the same goods as Plaintiff causing not only
13 "initial interest confusion" but also causing buyers to stay there, buy from
14 Defendants and likely may never return to Plaintiff's site.
- 15 33. Defendants are trafficking n the URL "gamelinkk.com" by including, but not
16 limited to offering it for sale to Plaintiff for an amount of thousands of dollars
17 and far in excess of any reasonable transfer fees, set up costs or the like and
18 ignoring Plaintiff's pleas to stop.
- 19 34. Defendants and each of them had no grounds to believe that it had any rights
20 in its URL gamelinkk.com. It is believed to be Defendants intent to divert
21 consumers from the Game Link's online location to a site accessible under the
22 domain name "gamelinkk.com" that could harm the goodwill represented by the
23 mark GAMELINK ®. Due to the nature of the adult online business, though it is
24 a competitive the industry knows each other well. Game Link is very famous in
25 this business community.

1 35. Plaintiff did not discover Defendants use of the URL gamelinkk.com until on or
2 about October 1, 2003 and Plaintiff is informed and believes, the "gamelinkk"
3 URL was registered on October 17, 2002.

4 36. Plaintiff registered its URL "gamelink.com" on or about March 16, 1995 for its
5 web site. Plaintiff had, from 1993 to 1995, done business as GAMELINK on a
6 BBS (online Bulletin Board Service) and then as GAMELINK on Telnet
7 (Internet text-based data exchange and search services) prior thereto.

8 37. The Defendants' Domain Name "gamelinkk.com" consists of a very close
9 misspelling of Plaintiff 's trademark GAMELINK and corporate name
10 GAMELINK, INC. Defendants intend as a fraud to divert consumers from
11 GAMELINK's web site to their web site by using this misspelled URL and to
12 profit thereby in bad faith. A copy of a true and correct print of Defendants web
13 site is attached hereto and made a part hereof as Exhibit 2.
14

15 **COUNT 3**

16 **Federal Unfair Competition**

17 38. As its third ground for relief, Plaintiff repeats and realleges paragraphs 1
18 through 25 of count 1 herein and Paragraphs 26-37 of Count 2.

19 39. Plaintiff's trademark GAMELINK has become uniquely associated with and
20 hence identifies Plaintiff. Defendant's interstate use of the designation
21 "GAMELINKK.COM" is a use of a false designation of origin, a misleading
22 representation that wrongfully and falsely designates defendant's products and
23 services as originating from or connected with Plaintiff, and constitutes utilizing
24 false descriptions or representations in interstate commerce.
25

1 40. These acts of Defendants are likely to cause confusion, or to cause mistake, or
2 to deceive as to the affiliation, connection, or association of Defendants web
3 site with Plaintiff's, web site or as to the origin, sponsorship, or approval of
4 Defendants web site by Plaintiff. Defendant's said acts are in violation of 15
5 U.S.C. § 1125(a).

6 **COUNT 4**

7 **Federal Dilution**

8 41. As its fourth ground for relief, Plaintiff repeats and realleges paragraphs
9 through 25 of Count 1 herein and Paragraphs 26-37 of Count 2 and
10 paragraphs 39 and 40 of Count 3.

11 42. The Plaintiffs mark GAME LINK has become famous for over a decade and is
12 distinctive in the market as to the services Plaintiff provides, since 1993 and
13 under the URL "gamelink.com" since 1995.

14 43. Plaintiff has spend millions of dollars and thousands of hours branding and
15 establishing its mark internationally, and is extremely famous in the industry its
16 services that include the online sales and delivery, fulfillment of goods,
17 provision of videos online and many other high quality and dependable discreet
18 online shopping services for adults.

19 44. Defendants and each of them are making unauthorized use of Plaintiffs
20 trademark in commerce and for commercial purposes to attract Plaintiff's
21 potential customers who happen to mistype the name GAMELINK.COM as
22 "gamelinkk.com."

23
24 45. Because Defendants use of the URL gamelinkk.com is used to divert
25 customers to Defendants site offering essentially the same class of goods, and
due to the cheap and simple appearance of the Defendants web site, with

offerings of poorer quality and less selection than Plaintiff, among other facts, Defendants are tarnishing Plaintiff's reputation in the market.

46. The Defendants use of the URL "gamelinkk.com" has caused and continues to cause a lessening of the capacity of its famous mark GAME LINK ® to identify and to distinguish Plaintiff's services and goods from those of others pursuant to 15 U.S.C. Sec. 1127 and 1125(c).

COUNT 5

Common Law Unfair Competition and "Passing Off"

47. As its fifth ground for relief, Plaintiff repeats and realleges paragraphs through 25 of Count 1 herein and Paragraphs 26-37 of Count 2.
48. Defendants by their acts as alleged herein have engaged in unfair, unlawful and fraudulent business practices and unfair competition with Plaintiff in violation of California and federal common law principals.
49. By virtue of defendant's acts, hereinabove pleaded, Defendants are "passing off" their website as that of Plaintiff.

COUNT 6

California Statutory Unfair Competition

50. As its sixth ground for relief, Plaintiff repeats and realleges paragraphs through 25 of Count 1 herein and Paragraphs 26-37 of Count 2.
51. Defendants by their acts as alleged herein have engaged in unfair, unlawful and fraudulent business practices and unfair competition with Plaintiff in violation of *California Business & Professions Code Sec. 17200 et seq.*

COUNT 7

California Anti-Dilution

52. As its seventh ground for relief, Plaintiff repeats and realleges paragraphs through 25 of Count 1 herein and Paragraphs 26-37 of Count 2 and paragraph 39 and 40 of Count 3.

53. Defendant's acts, hereinabove pleaded, have caused and there exists likelihood of injury to Plaintiff's business reputation and of dilution of the distinctive quality of Plaintiff's mark and forms of advertisement, all violations of *California Business & Professions Code Sec. 14330*.

WHEREFORE, Plaintiff demands:

1. That defendant, its officers, agents, servants, employees, and attorneys and all those persons in active concert or participation with it be forthwith preliminary and thereafter permanently enjoined and restrained from:

- a. Using the trademark GAMELINKK.COM or any confusingly similar designation alone or in combination with other words, as a trademark, trade name component URL or otherwise, to market, advertise or identify defendant's online sales of adult entertainment products or related products;
- b. Otherwise infringing Plaintiff's mark;
- c. Unfairly competing with Plaintiff in any manner whatsoever; and
- d. Causing likelihood of confusion, injury to business reputation, or dilution of the distinctiveness of Plaintiff's symbols, labels, or forms of advertisement.

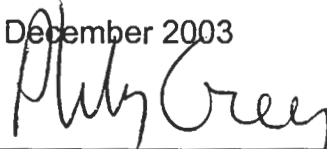
2. That defendant be directed to file with this Court and serve of Plaintiff within thirty days after the service of an injunction, a report in writing under oath, setting forth in detail the manner and form in which defendant has complied with the injunction.
3. That defendant be required to deliver up and destroy all devices, literature, advertising and other material bearing the infringing designation.
4. That Defendants and their URL Registrar be ordered to transfer full registration of the URL www.gamelinkk.com to Plaintiff.
5. That Plaintiff be awarded defendant's trademark infringement profits after an accounting.
6. That Plaintiff be awarded statutory damages under the Lanham Act including, but not limited to, §32 (15 U.S.C. §1114).
7. That Plaintiff be awarded statutory damages under the Lanham Act including, but not limited to, *Lanham Act* §35 (15 U.S.C. §1117) including defendant's profits, any damages sustained by the plaintiff.
8. That Plaintiff be awarded statutory damages including, but not limited to, the costs of the action, a judgment for three times such profits or damages, whichever is greater, together with a reasonable attorney's fee, due to violations of *Lanham Act Section 32(1)*.
9. That Plaintiff be awarded damages costs of the action and attorney fees under California Business & Professions Code Sections 17200 – 17210 *et seq.*, 14330 *et seq.*
10. That Plaintiff be awarded damages, costs of the action and attorney fees for common law, state and Federal unfair competition and passing off in the

1 amount of \$5,000,000.00. for, including, but not limited to, damaged reputation,
2 loss of business and costs of remedial advertising.

3 11. That Plaintiff have and recover costs in this suit.

4 12. That Plaintiff have such other and further relief as the Court may deem
5 just.
6

7
8 Dated 4 December 2003

9 

10 Philip R. Green
11 Green & Green
1000 Fourth Street, Suite 595
San Rafael, CA 94901

12 Attorney for Plaintiff Game Link, Inc.
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The United States of America



**CERTIFICATE OF REGISTRATION
PRINCIPAL REGISTER**

The Mark shown in this certificate has been registered in the United States Patent and Trademark Office to the named registrant.

The records of the United States Patent and Trademark Office show that an application for registration of the Mark shown in this Certificate was filed in the Office, that the application was examined and determined to be in compliance with the requirements of the law and with the regulations prescribed by the Commissioner of Patents and Trademarks, and that the Applicant is entitled to registration of the Mark under the Trademark Act of 1946, as Amended.

A copy of the Mark and pertinent data from the application are a part of this certificate.

This registration shall remain in force for TEN (10) years, unless terminated earlier as provided by law, and subject to compliance with the provisions of Section 8 of the Trademark Act of 1946, as Amended.



Bruce Lehman

Commissioner of Patents and Trademarks

Int. Cl.: 35

Prior U.S. Cls.: 100, 101 and 102

Reg. No. 2,206,576

United States Patent and Trademark Office

Registered Dec. 1, 1998

**SERVICE MARK
PRINCIPAL REGISTER**

GAME LINK

**GAME LINK, INC. (CALIFORNIA CORPORATION)
330 TOWNSEND ST, STE. 123
SAN FRANCISCO, CA 941071630**

FOR: ELECTRONIC AND ONLINE RETAILING SERVICES BY MEANS OF A GLOBAL COMPUTER NETWORK, FEATURING PRODUCTS FOR ADULTS, NAMELY, VIDEOS, CD-ROMS, FILMS, BOOKS, RUBBER GOODS AND

ADULT TOYS, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 2-20-1993; IN COMMERCE 2-20-1993.

SER. NO. 75-272,430, FILED 4-10-1997.

ANTHONY R. MASIELLO, EXAMINING ATTORNEY

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